BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

RAYMOND D. CARPENTER AND OTHERS
(Claimants)
(See Appendix)

PRECEDENT
BENEFIT DECISION
No. P-B-110
Case No. 70-4828

S.S.A. No. [redacted] AND OTHERS
(See Appendix)

BRENT J. ANDERSON
(Claimant)

Case No. 71-766

S.S.A. No.

HENDY INTERNATIONAL COMPANY
(Employer)

Employer Account No.

Prior to the issuance of the referee's decision in Cases Nos. SF-16252, SF-17152 and SF-UCX-2603, we assumed jurisdiction under section 1336 of the Unemployment Insurance Code. The Department's determinations in each of those cases held the claimant disqualified for unemployment insurance benefits under section 1256 of the Unemployment Insurance Code and the employer's account relieved of charges under section 1032 of the code.

Subsequent to the issuance of the referee's decision in Cases Nos. SJ-11061 and SF-15294, we also assumed jurisdiction under section 1336 of the code. The referee's decision in each of the aforementioned cases held that the claimant had good cause for voluntarily leaving work under section 1256 of the code. In Case No. SJ-11061, the referee's decision also held the employer's account not relieved of benefit charges.

In a long series of decisions spanning a period of many years this board has given attention to situations involving seamen who leave their vessels either under the terms of a collective bargaining agreement or in obedience to union rules. In Benefit Decision No. 5078, where the leaving was the result of a unilaterally imposed union rule, we held that the claimant's leaving was voluntary and without good cause. In that case the claimant was a permit man required to abide by the rules and regulations laid down by the union membership, one rule requiring that permit men make only one voyage and then leave their ship at the conclusion of the voyage so that jobs might be rotated among the union membership in order to keep the majority of the permit men employed. This rule was not mentioned in the collective bargaining agreement and the agreement disclosed no intention of the employer to recognize or be bound by the rule.

In reviewing that portion of the predecessor provision to what is now section 1256 of the code and the language of the legislature in dealing with claimants who voluntarily leave their employment without good cause, this board recognized the public policy set forth in the first section of the act (now section 100 of the code) that benefits be paid to unemployed persons who are unemployed "through no fault of their own." We stated in Benefit Decision No. 5078:

> "A suspension of benefits under Section 58(a)(1) can be supported only if a claimant left his most recent work, did so voluntarily, and acted without good cause in so doing. In Matter of Rumore, Benefit Decision 4709, a case involving a seafaring claimant who left his work under somewhat the same conditions as are here presented, we said: 'It would be anomalous to say that an independent agency can terminate an employee without any act on the part of the employer to bring about such a result.' In Matter of Nelidov, Benefit Decision 4725, a similar case, we said: 'If the claimant had been removed from the ship by his union . . . such act cannot be deemed to be a termination of his employment by his employer.' The record in the instant case

himself from his employment. We went on to state that we recognized a claimant in such circumstances was caught between Scylla and Charybis - he risked the loss of unemployment insurance benefits or risked the loss of returning to gainful employment in the future if he refused to obey the unilateral rule - but stated:

> ". . . We have no authority to, nor do we pass upon the propriety of the union rule. It may be properly assumed, however, that the union had the right to make and to enforce the rule within its membership, and that the claimant was within his legal rights in observing it. Neither do we consider nor pass upon the propriety of the objective of the rule, though it may be observed in passing that a 'spread-the-work' program is not necessarily an 'employment stabilization' program (see Section 1 of the Act). As was pointed out in Barclay-White v. Board of Review, supra, 'while the legislature (in passing the Pennsylvania Unemployment Insurance Act) indicated a sympathetic and proper respect for labor organizations, the purpose of the Act was not to further their objectives as such. The Act stands impartial between organized labor and industry in the evolution of their relations one with the other . . .' (See also Matson Terminals v. C.E.C. 24, Cal. (2d) 695 and Grace and Company v. C.E.C. 24 Cal. (2d) 720)

> "The standards which determine eligibility and disqualification for benefits are those set forth in the Act and none other. The Legislature alone has the power to establish these standards, and they may not be varied by private action, rule or agreement. 'Nothing in the Act suggests that a union or a group of employers or anyone else may add to or subtract from the standards laid down in the Act itself . . . A group of individuals cannot secure higher privileges merely by adopting a rule which binds them to a certain course of conduct' (Bigger v. Delaware U.C.C. (Del.) 46 Atl. (2d) 137). In Bodinson Manufacturing Company v. C.E.C., supra, it was urged that the crossing

App. 2d 7, 278 P. 2d 762). We must therefore consider the pertinent provisions of the agreement in order to determine the category within which the claimant's separation from work falls. Under the terms of the contract, the claimant agreed to furnish his services to the employer for a limited time; and the employer agreed to provide work for the claimant for the same limited time. Neither party could do more without violating the terms of the collective bargaining agreement. Under these circumstances, we conclude that the employment relationship simply ended in accordance with the terms of the agreement. Since there was no leaving of work voluntarily without good cause, and no discharge for misconduct connected with the work, section 1256 of the code is not applicable. The same conclusion applies to section 1030 of the code (Ruling Decisions Nos. 1 and 13). Therefore, the employer's account may not be relieved of charges under section 1032 of the code."

In Benefit Decision No. 6613 this board was supported in its conclusion by the then recently handed down decision in Douglas Aircraft Company, Inc. v. California Unemployment Insurance Appeals Board, et al., 4 Cal. Repr. 723; and, in quoting with approval from the Douglas decision, we held that an employee could not be deprived of a statutory right to unemployment compensation benefits merely because a collective bargaining agreement enforced a bilateral rule that the claimant would be separated from employment by a certain date. Though noting certain factual distinctions between Douglas and Benefit Decision No. 6590, we found the legal conclusions in Douglas were applicable to the case then before it.

Courts in other jurisdictions have denied claimants compensation when their unemployment was due to a unilaterally imposed work rule. (See Anson v. Fisher Amusement Corporation (1958), 254 Minn., 93, 93 NW 2nd 815; Blakeslee v. Admin. Unemployment Compensation Act, 25 Conn. Supp. 290; 203 A. 2d 119 (Sup. Ct. 1964)) One of the more recent cases in California which dealt with the problem of a bilateral work rule where the union

for leaving work, of this we have no doubt. But just as the desperately ill claimant who is unable to continue work and who leaves on advice of his physician may be disqualified for benefits because he does not request an available leave of absence - a condition subsequent, in effect, which negates "good cause" and bars recovery - so too in the present cases where as a condition precedent the claimants took work voluntarily, they accepted the conditions of employment voluntarily and then left work voluntarily, they must subsequently be denied benefits. Other well-known illustrations might be cited to buttress this point. The analogy used is sufficient. The test is clear:

> "Section 100 of the California Unemployment Insurance Code provides, in part, 'for the compulsory setting aside of funds to be used for a system of unemployment insurance providing benefits for persons unemployed through no fault of their own. . . .' (Emphasis added.) This is not a mere preamble to the code section. It is an integral part of it. This is declared by the legislature to be 'a guide to the interpretation and application' of the code provisions covering unemployment benefits, and a part of the 'public policy of this State' in such matters. It is therefore established that fault is a basic element to be considered in interpreting and applying the code sections on unemployment compensation." (See Sherman/Bertram, Inc. v. California Dept. of Employment (1961), 202 C.A. 2d 733, 21 Cal. Rptr. 130)

We hold that the claimants in each of the cases herein voluntarily left their most recent work without good cause.

APPENDIX

NAME AND ADDRESS OF CLAIMANTS	SSA NO. LOCAL OFFICE BYB DATE
CARPENTER, Raymond D.	037-03290
DYER, Charles H.	037-01180
O'CONNOR, Dennis J.	037-11239
PARDO, Edward Jr.	085-05310

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ANDERSON, Brent J.	037-05260